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STAT

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

WASHINGTON, D.C. 20408

September 8, 1976

MEMORANDUM FOR:

DAVID O. COOKE, DEFENSE
ANTONIN SCALIA, JUSTICE
JOHN A. GRIFFIN, ERDA
WILLIAM G. HYLAND, NSC
[redacted] CIA STAT
HORACE F. SHAMWELL, JR., STATE
JAMES E. O'NEILL, ARCHIVES

SUBJECT: CLASSIFICATION ABUSES

PROBLEM:

During the ICRC Staff's presentation at the August 1976 meeting of program trends for the first half of CY 1976, it was pointed out that, because of improved inspection systems within Departments, there has been a significant increase in the number of "abuses" reported. It was projected by the Staff that, if the current reporting rate continues, the Committee will experience a 200% gain in the number of "abuses" reported for 1976. The significant increase was a matter of extreme concern to all members present at the meeting. It was their unanimous opinion that such figures may be misinterpreted by the Congress as a sign of decline in the program's progress. This opinion was based on the feeling that the definition now used by the Committee to describe reportable "abuses" was too broad and involved the reporting of administrative irregularities rather than concentrating on the substantive errors as described in the Executive Order. It was the consensus of the Members present that the Committee reevaluate its definition of a reportable "abuse" and its reporting requirements related to this subject. It is the purpose of this Memorandum to present for the Members the history of such reporting requirements and possible courses of action which can be taken by the Committee. This matter will be placed on the agenda of the September 1976 meeting.

BACKGROUND:

Executive Order 11652, in Section 13, addresses "abuses" as follows:

> "(A) Any officer or employee of the United States who unnecessarily classifies or overclassifies information or material shall be notified that his actions are in violation of the terms of this order

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or of a directive of the President issued through the National Security Council. Repeated (emphasis added) abuse of the classification process shall be grounds for an administrative reprimand. In any case where the Departmental Committee or the Interagency Classification Review Committee finds that unnecessary classification or overclassification has occurred, it shall make a report to the head of the Department concerned in order that corrective steps may be taken."

It is apparent from the above that the Order considers only unnecessary classification and overclassification as "abuses" of the classification process. Moreover, it requires repeated instances of such "abuse" to occur before the initiation of administrative reprimand. If ICRC reporting requirements were confined strictly to instances of unnecessary or overclassification, then the term "abuse" may well be a proper term.

In Section X C, of the May 17, 1972 National Security Council Directive issued in implementation of Executive Order 11652, Departments were required to submit quarterly reports of Departmental Committee actions on classification review requests, classification "abuses" and unauthorized disclosures. At the August 1976 meeting of the ICRC, Members voted to change the quarterly reporting requirements to a semi-annual basis.

In accordance with the provisions of the Order, the Committee developed quarterly reporting requirements in order to fulfill its monitorship role. In the initial version, the Committee promulgated the following relating to classification "abuses":

"A classification abuse is identified as over-classification or under-classification of a document; the assignment of too long a schedule for downgrading and declassification; or improper application of classification markings. It specifically applies to placing a document in an exempt declassification category except as provided in the cited Executive Order or NSC Directive. A classification abuse would also include any classification action by an individual not authorized in writing to exercise appropriate classification or exemption authority or the improper delegation of such."

In promulgating this requirement, it was made clear that Departments were expected to establish inspection programs to ensure that documents were being properly marked and that there was neither unnecessary or overclassification. Departments were informed that it was not contemplated that the quarterly report on classification abuses should be limited to incidents where disciplinary action was considered or taken by the Departmental Committees. Immediately following promulgation, Departments offered comments expressing the viewpoint that most "abuses" would be unintentional errors based upon inexperience which would be corrected at the higher level of supervision. They expressed the belief that some supervisors would be reluctant to report innocent "abuses" or that the reporting of all "abuses" would detract from the resources needed to inform employees more fully on the requirements of the Executive Order.

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Some Departments recommended that the reporting requirement be changed to require reporting of only deliberate, negligent or repeated "abuses". Other Departments objected to the inclusion of the names and/or titles of the "abusers". Others stated that one-time technical "abuses" should be considered as inadvertent mistakes. In March 1973, the requirement for the reporting of names of individuals was deleted. Experience with the reporting requirements indicated that few classification "abuses" were reported to the Committee. In response to a Department of Defense recommendation, a Subcommittee was formed in January 1974, to develop and recommend to the Committee a "meaningful yet workable definition of a classification abuse". The primary point addressed by the Subcommittee was the existing requirement to include in the report "abuses" committed out of ignorance rather than any intentional desire to circumvent the system. In May 1974, the Committee unanimously adopted the revised definition developed by the Subcommittee. That version read:

> "The term 'classification abuse' means an unnecessary classification, and over or under classification, a failure to assign the proper downgrading and declassification schedule, an improper application of classification markings, an improper placing of a document in an exempt declassification category, any classification or exemption action taken without proper authority, or an improper delegation of classification authority. A reportable abuse shall mean any of the actions described above except any such action which results exclusively from a decision on a judgemental factor as to which there exists a reasonable and good faith basis for disagreement. Such abuses becoming known during the reporting period, including abuses becoming known as the result of an appropriate Departmental inspection program, shall be reported."

This is the current definition used by the Committee.

DISCUSSION:

Since the issuance of the above changed definition, the number of reported instances of "abuse" have continually escalated. This is in part due to the vastly improved inspection systems developed by many Departments, the revision of the reporting format which requires that Departments indicate only the number of types of "abuses" and actions taken thereon, and finally, to the inclination of most reporting Departments to report all administrative errors without applying the reasonable and good faith judgment qualifying clause contained in the ICRC definition. The ICRC Staff shares the concern expressed by the Members at the last meeting that the great increase in reported actions may well be misinterpreted by the Congress. It is the position of the staff that the present definition is too broad and stringent and concentrates too much on administrative infractions rather than the substantive issues of overclassification and unnecessary classification spelled out in the Order. Equally, the Staff feels that the present definition should be changed to distinguish between those substantive violations of the order taken with a conscious purpose or intention and those actions

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which are purely administrative infractions. An analysis of reports of classification "abuses" submitted for the 2nd quarter of 1976 indicates that approximately 94% of the reported instances dealt with marking or marking related irregularities. Less than 1% were for unnecessary classification; 0.2% for overclassification; 3% for classifying without authority and 0.3% for exemption without authority. Listed below are possible options which the Committee might adopt to resolve this problem:

OPTIONS:

1. Retain the definition of "Abuses" and the reporting requirements as currently promulgated.

   Advantages:

   (a) Departments are familiar with the reporting requirements and no re-education program would be required.

   (b) We would continue to obtain data which, although it pertains primarily to marking irregularities, does provide both the Department and the Committee with an indication of program shortcomings. Education and training can, therefore, be structured to resolve these problems.

   Disadvantages:

   (a) In all probability instances of "abuse" will continue to escalate.

   (b) The disclosure of the greatly increased number of "abuses" may well become a source of concern among the public and within the Congress.

   (c) The use of the term "abuse" to reflect marking discrepancies is not consistent with the term as used by the Order.

   (d) As currently defined by the Committee, Departments may well be wasting valuable resources to identify and report administrative discrepancies. Such resources could better be used on other phases of the program such as education, training, declassification, etc.

2. Rewrite the present definition as follows:

   "Reportable classification abuses are those which involve repeated or intentional instances of overclassification or unnecessary classification."

   Advantages:

   (a) This definition is consistent with the intent of the Executive Order.

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(b) Inspection and reporting requirements would be lessened.

(c) The number of reported instances of classification "abuse" would be dramatically reduced.

Disadvantages:

(a) In all likelihood, Departments would report few, if any, "abuses". This might in itself be looked upon with disfavor by the Congress or the public.

(b) Departments would probably place considerably less emphasis on inspection systems to identify discrepancies with a concomitant decline in program progress.

(c) Departments and the Committee would lose the benefits of being able to identify the weaknesses or shortcomings in the various programs which involve marking irregularities.

3. Retain the current definition and reporting requirements but change the term from "Abuse" to "Security Discrepancies" ("Classification Errors") ("Administrative Security Deviations") ("Administrative Security Violations") ("Classification Irregularities").

Advantages:

(a) Minimal re-education and change or reporting format required.

(b) Eliminates the use of the more harsh term "abuse". Does not imply willingness or gross negligence.

Disadvantages:

(a) May be looked upon by the Congress and the public as a weakening of the system.

(b) Probably would not result in any significant reduction in the reporting of discrepancies. In fact, may well result in more.

4. Develop a new definition which distinguishes between true "abuses" as defined by the Order and security marking discrepancies, such as the following:

"Reportable classification abuses are defined as those instances of repeated, deliberate or negligent unnecessary classification, overclassification, classification without authority or exemption without authority. Reportable security classification marking discrepancies are defined as those instances of repeated deliberate or negligent security marking infractions including:

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(1) the failure to apply or the improper application of classification markings,

(2) the failure to apply or the application of improper downgrading/declassification markings,

(3) a failure to show the classification authority and

(4) the improper placing of a document in an exempt declassification category.

All such instances of classification abuse and security marking discrepancies becoming known to the Department during the reporting period meeting the criteria described above shall be reported to the Interagency Classification Review Committee on a semi-annual basis in the format promulgated by the Committee."

Advantages:

(a) Concerning true abuses, the proposed version is more in line with the Executive Order. Classification without authority and exemption without authority have been added to the definition because it is felt both have a material impact on the success of the program.

(b) Retaining the reporting of marking discrepancies will provide indicators of program weaknesses and areas which require additional emphasis. However, separation of these instances from "abuses" will lessen the probability of congressional concern over increased abuse of the system.

(c) Minimum re-education of personnel or adjustments in existing inspection programs will be required. Stocks of present reporting forms can be used until exhausted and the staff can make the necessary distinctions between "abuses" and "marking discrepancies".

Disadvantages:

(a) Probably more effort will be required from Departments to distinguish repeated, deliberate or negligent "abuses" and "marking discrepancies".

(b) The more limiting definitions will result in fewer reported instances. This is a disadvantage only so far as monitorship is concerned.

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RECOMMENDATION:

The ICRC Staff recommends the adoption of Option No. 4 or some variation thereof. If adopted, changes will be required in the ICRC procedures printed in the Code of Federal Regulations.

Robert W. Wells

ROBERT W. WELLS
Executive Director

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 May 1977

Mr. Robert W. Wells
Executive Director
Interagency Classification Review Committee
National Archives and Records Service (NI)
Washington, D.C. 20408

Dear Mr. Wells:

We appreciate your calling our attention to the apparent classification abuses discovered during your program review visits. Your Committee's careful monitorship of the security classification management program should result in greater awareness and control over classification actions in the executive agencies.

The three documents cited in your letter of 25 April were area intelligence reports which are sent to selected customers on a daily or weekly basis. You indicate that the first two messages do not appear to require classification. In fact, they do meet the criteria for classification, although the sensitive information is not contained in the text but in the address heading. We acknowledge though, that the documents should be classified more appropriately at the Confidential level.

The third message, in which the paragraphs are marked as Confidential but the overall document classification was indicated as Secret, was an error in this case. The matter was brought to the attention of the appropriate authority and it will be corrected. We hope you recognize the possibility, as we do, that separate paragraphs of a document may require a lower classification than that required by the total document. Taken individually, information in single paragraphs may, in the words of the Executive order, "cause some degree of damage to the national security" if disclosed, but the totality of the information in the document may warrant a higher degree of protection.

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INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

WASHINGTON, D.C. 20408

25 APR 1977

STAT

Assistant for Information
CIA
Langley, Virginia 20505

Dear STAT

An Interagency Classification Review Committee (ICRC) staff member, during an examination of files in an executive branch agency, noted several CIA originated classified messages which appeared to be improperly marked, (described below). We would appreciate your checking into these and informing us of your findings.

a. Message CIA Confidential 998227, 9 March 1977, LAB 77-036. Text does not appear to warrant any classification.

b. Message CIA Secret Noforn 021329, 19 April 1977 EAB 77-060. Text does not appear to warrant any classification.

c. Message CIA Secret Noforn XGDS-2 021326, 19 April 1977, EB 77-060. Text is indicated as Confidential.

Sincerely,

Robert W. Wells

ROBERT W. WELLS
Executive Director

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4 MAY 1977

MEMORANDUM FOR: Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Science and Technology
Administrative Officer, DCI

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Document Classification

1. On 25 April the Agency received a memorandum from the Executive Director of the Interagency Classification Review Committee (ICRC) advising us that in the course of a routine ICRC review of another Government agency, three CIA documents had been located which appeared to be improperly classified. In the course of our follow-up on this matter, it was determined that the officer whose employee number was cited on the documents as having authorized their classification did not, in fact, do so. As a result of a recent reorganization, the employee had been reassigned but his former office had continued to use his employee number as authorization for document classification.

2. It is obvious that with the increased emphasis being placed by the Executive branch on proper classification and with the numerous cases of litigation arising out of the Freedom of Information Act, Privacy Act and other matters, we must ensure that practices such as cited above are eliminated. It is important that employees whose numbers are cited as authorizing classification of documents involve themselves personally in the process by either actually reviewing documents being classified or through strict supervision and guidance of others who might be authorized to use their number. It should be emphasized that in recent months senior Agency officials have been called to testify in court regarding classification matters, and it can be anticipated that such occasions will arise in the future. The outcome of such legal proceedings could be adversely affected if it could be demonstrated that classified material in question was not in fact properly classified.

3. I would appreciate your bringing to the attention of members of your component the importance of strict adherence to established classification procedures.

/s/John F. Blake

John F. Blake

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WASHINGTON, D.C. 20408

25 APR 1977

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Assistant for Information
CIA
Langley, Virginia 20505

Dear STAT

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c. Message CIA Secret Noforn XGDS-2 021326, 19 April 1977, EB 77-060. Text is indicated as Confidential.

Sincerely,

Robert W. Wells
ROBERT W. WELLS
Executive Director

Person whose no. was used had never seen doc. DDI/Coordination Staff

new staff left he still used

2 docs were area briefs.

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

| | UNCLASSIFIED | | CONFIDENTIAL | | SECRET |
|---|---|---|---|---|---|

# OFFICIAL ROUTING SLIP

| TO | | DATE | INITIALS |
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| 1 | | | |
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| 6 | | | |

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| | ACTION | | DIRECT REPLY | | PREPARE REPLY |
| | APPROVAL | | DISPATCH | | RECOMMENDATION |
| | COMMENT | | FILE | | RETURN |
| | CONCURRENCE | | INFORMATION | | SIGNATURE |

**Remarks:**

An old dog.

B.

FOLD HERE TO RETURN TO SENDER

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|---|---|
| AI/DDA | 2/8/77 |

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

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# OFFICIAL ROUTING SLIP

| TO | NAME AND ADDRESS | DATE | INITIALS |
|---|---|---|---|
| 1 | C/ISAS | 12 MAR 1976 | CeA |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | Mtg 23 Mar. 2:00 | | |
| 6 | | | |

| | | | | | |
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| | APPROVAL | | DISPATCH | | RECOMMENDATION |
| | COMMENT | | FILE | | RETURN |
| | CONCURRENCE | | INFORMATION | | SIGNATURE |

**Remarks:**

I would like the problem - and this proposed solution - taken up with the Directorate RMOs for their reaction, inputs, etc. at (or over)

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| A1/DDA | 3/12 |

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(any other approach)
would not work
unless we have a
pretty high degree
of RMO support.

B.

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

UNCLASSIFIED | CONFIDENTIAL | SECRET

# OFFICIAL ROUTING SLIP

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|---|---|---|---|
| 1 | C/IRAS 10 | MAR 1976 | ecp |
| 2 | Hold - See ovly | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
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| | COMMENT | | FILE | | RETURN |
| | CONCURRENCE | | INFORMATION | | SIGNATURE |

**Remarks:**

Please let me have your comments,

RB

ovly

FOLD HERE TO RETURN TO SENDER

| FROM: NAME, ADDRESS AND PHONE NO. | DATE |
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| A1/DDA | 3/10 |

UNCLASSIFIED | CONFIDENTIAL | SECRET

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Hal

I agree - certainly this is better than nothing. I question only whether Records Management Officers have the stature or clout to make the review meaningful. But then they are the only ones in town who might be responsive to "system" set up by ISAS — & think we should try it anyway.

Carl

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TRANSMITTAL SLIP | DATE 3/10

TO: [redacted]

ROOM N

REMARKS:

I realize the NSSM 229 group is looking at this, but in the meantime we still have no system

FROM: [redacted]

ROOM NO. | BUILDING | EXTENSION

FORM NO. 241 1 FEB 55 REPLACES FORM 36-8 (47)

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